# The Corporation Journal

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## DOMESTIC CORPORATIONS.

### ALABAMA.

**CONFLICT OF CORPORATE NAME WITH PRIOR TRADE NAME.** An individual who had established a business known as the "Mobile Transfer" is entitled to an injunction against a corporation subsequently using the name "Mobile Transfer Company, Inc." It is no defense that the individual had adopted the name of an insolvent corporation which had been dissolved, as the defendant was not a successor but a stranger to the defunct corporation. It was also no defense that the defendant had been incorporated under the conflicting title. A corporate name "is not binding or conclusive on third parties, who were not, and could not be made, parties to the proceedings to incorporate." Mobile Transfer Co. v. Schwarz, 70 So. 640.

### ARKANSAS.

**LIABILITY OF SUBSCRIBERS TO STOCK OF AN INTENDED BUT UNORGANIZED CORPORATION.** Several citizens of a town decided to establish a factory for canning tomatoes and to incorporate for that purpose. A subscription list was prepared and signed. The factory was equipped and operated, but no steps were taken to incorporate. The enterprise was not profitable, partly because of the fact that the farmers in the vicinity did not raise sufficient tomatoes. Land was therefore rented and tomatoes were grown to supply the deficiency. For money advanced by it and used in the venture, the local bank sued all the subscribers and took judgment against one of them. This one sued the others for contribution. None were liable as stockholders in a *de facto* corporation as there was no attempt whatever to incorporate. Their liability as partners to make contribution was divided into three classes, namely: with respect to those who subscribed but took no further part in the business, those who confined their participation to the establishment and operation of the factory and those who also took part in the growing of tomatoes. The first class were not liable. They supposed the factory had been organized as a corporation and took no part in the business.

The second class were only liable for indebtedness connected with operating the factory. No other purpose was mentioned in the subscription contract. Because of their actual participation therein, the third class were also liable for indebtedness incurred in growing the tomatoes. Rainwater v. Childress, 182 S. W. 280.

**CALIFORNIA.**

**PAR VALUE OF PREFERRED AND COMMON STOCK MUST BE THE SAME.** The Civil Code (Section 290, Subd. 6) permits the issuance of preferred stock, "provided, however, that no preference shall be granted nor shall any distinction be made between the classes of stock either as to voting power or as to the statutory or constitutional liability of the holders thereof to the creditors of the corporation." The law also provides (Section 322) that each stockholder shall be personally liable for such proportion of the corporate debts "as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation." Articles of incorporation which provide for capital stock of $1,000,000, divided into 50,000 shares of common stock of the par value of $1.00 each, and 47,500 shares of preferred stock of the par value of $20.00 each, violate the above laws and are rightfully refused for filing by the Secretary of State. The difference in par value would give a preference to the voting power of the common stock, while as to the stockholder's liability, preference is given to the preferred stock. The Court says: "The truth of the matter is that our statutes were framed, and our decisions under them based, upon a capitalization represented by shares of a single par value." Film Producers v. Jordan, 154 Pac. 605.

**FLORIDA.**

**PERSONAL LIABILITY OF INCORPORATORS.** The General Statutes (Section 2652) provide that no corporation shall transact any business before it has, among other things, filed with the Secretary of State and with the Clerk of the Circuit Court of the county wherein the principal place of business is located "duplicate affidavits by its treasurer that ten per cent. of its capital stock has been subscribed and paid." If this is not done, the stockholders "shall be personally liable for all of the corporation debts as if they were members of a general partnership and not stockholders of a corporation." The effect of this statute is to render the stockholders immediately liable as partners from the instant an obligation is incurred under the circumstances stated. It is not a liability created by statute. The statute merely states the conditions upon which one's ordinary liability continues. Winfield v. Truitt, 70 So. 775.

**GEORGIA.**

**NOTICE OF STOCKHOLDERS' MEETING TO AUTHORIZE BOND ISSUE.** The bond issue of a company organized under the general railroad laws is not void because notice of the authorizing stockholders' meeting provided by statute (Civ. Code 1910, Sec. 2583) was not published for the time stated in the statute and one or possibly two stockholders, holding one share each, did not receive

any notice of the meeting. Provisions for notice are for the benefit of stockholders and may be waived by them. Georgia Granite R. Co. v. Miller, 87 S. E. 897.

**VOTING OF STOCK BY HOLDING COMPANY.** A corporation owning stock in another company pledged it as part collateral for its own bond issue. The certificate for this stock was made out to the trustee of the bond issue. Under a clause in the trust mortgage providing for the corporation's retention of management of the entire property and for receipt of dividends on the pledged stock, the corporation and not the trustee had the right to vote the stock. And for this purpose a proxy issued by the president and secretary of the holding company without express authority from the directors was valid, in view of the manner in which the business of the company was normally conducted. Georgia Granite R. Co. v. Miller, 87 S. E. 897.

**IDAHO.**

**A TRUSTEE MAY NOT FORECLOSE** for the full amount of the bonds which it has certified, irrespective of the amount which has been put into circulation. Foreclosure is limited to the amount issued. Putting bonds out as collateral as well as an absolute sale may constitute "an issue," but there must be an alienation by which some third party acquires a right or interest. Equitable Trust Co. v. Great Shoshone & T. F. W. P. Co., 228 Fed. 516.

**FAILURE TO RECORD TRUST DEED AS CHATTEL MORTGAGE.** The franchises, generators, dynamos, switch-boards, and other articles of equipment constituting essential parts of the mortgagor's generating, transmitting and distributing system, also tools, implements and materials, teams and conveyances, presently necessary for the maintenance, repair and operation of the system of a public service corporation, are so related to its public purposes as to be "deemed a single indissoluble unit" with its real property. Hence a failure to record as a chattel mortgage a trust deed covering all of the corporate property does not affect the right to include the above in a foreclosure suit and decree. But this does not extend to supplies and tools in excess of present needs, bills receivable, cash on hand, etc. Equitable Trust Co. v. Great Shoshone & T. F. W. P. Co., 228 Fed. 516.

**INDIANA.**

**ORGANIZATION OF ELECTRIC LIGHT AND POWER COMPANIES—EMINENT DOMAIN.** Chapter 172 of the Acts of 1907 authorizing the formation of companies for the manufacture and sale of electricity for use by the general public is not a special act nor class legislation so as to violate the State Constitution. Such a company is entitled to condemn land for a power site. Miller v. Southern Indiana Power Co., 111 N. E. 308.

**KENTUCKY.**

**MINUTES OF THE BOARD OF DIRECTORS** authorizing the president to employ a superintendent do not constitute a binding contract upon the corporation,

where the president was required to submit the terms to the board for approval. Bowen v. Chenoa-Hignite Coal Co., 182 S. W. 635.

**TRANSFER OF STOCK.** The method of transferring stock is governed by the laws of the state under which the company is incorporated. In this case the law of the incorporating state, i. e., West Virginia, is the same as that of Kentucky with respect to the rule that a sale and transfer in good faith is valid against an attachment after such sale, but before transfer on the books of the corporation. Registering transfers is mainly for the benefit of the corporation and to enable it to identify the holders of its stock. Husband v. Linehan, 181 S. W. 1089.,

**MANITOBA.**

**LIABILITY ON CONDITIONAL SUBSCRIPTION.** A doctor who subscribed to the stock of an insurance company, with an oral understanding that he was to be appointed chief medical referee, is not liable on his subscription upon failure of the company to make the appointment. Re Great Northern Assurance Co.; Black's Case, 25 D. L. R. 703.

**MARYLAND.**

**SERVICE OF PROCESS** upon its attorney at law is not binding upon a corporation. An attorney is not an "officer" within the meaning of Code, Article 23, Section 87, which provides that process against a domestic corporation may be served upon its president, director or other officer. Washington & R. Ry. Co. v. Johnson, 96 Atl. 445.

**MINNESOTA.**

**EXECUTION OF CORPORATE NOTE.** Signing the name of the corporation to a note without adding the capacity of the persons signing is sufficient to bind the company. According to Section 8448, Gen. St. 1913, such an instrument is prima facie evidence that it was legally executed until such execution is denied under oath by an officer or representative of the corporation who has personal knowledge of the facts. Denial in the instant case by a mere stockholder who did not show knowledge was insufficient. National City Bank v. Zimmer Vacuum Renovator Co., 156 N. W. 265.

**NEW JERSEY.**

**PROPOSED REVISION OF THE CORPORATION ACT.** On March 6th the New Jersey Legislature adopted a resolution that a joint committee of three members from each House be appointed to consider the revision of the Corporation Act and to make their recommendations for revision or amendment to the next session of the Legislature (Senate Concurrent Resolution No. 1).

**UNIFORM STOCK TRANSFER ACT.** The Uniform Stock Transfer Act has been adopted in the State of New Jersey, Chapter 191, Laws of 1916, approved March 18, 1916.

**INSOLVENCY JUSTIFYING THE APPOINTMENT OF A RECEIVER** is shown where a corporation has no credit, is several years in default in state taxes, cannot pay office rent and has pledged its securities to keep going. This condition is not offset by the ownership of certain Mexican and other bonds, not salable in the open market. " 'Insolvency' as understood by our courts in matters of this kind, is a general inability to meet pecuniary obligations as they mature, by means of either available assets or an honest use of credit." Wright v. American Finance & Securities Co., 96 Atl. 387.

**ESTOPPEL OF STOCKHOLDERS TO COMPLAIN OF VALUATION OF PROPERTY.** Stockholders who were present at a meeting and voted for a resolution authorizing the voting of stock for property, and stood by for two years and made no protest against the company operating under the purchase, are estopped, in the absence of proof of fraud upon them, from complaining of the valuation placed upon the property purchased. McMahon et al v. The Pneumatic Transit Co. (not yet officially reported.)

**JUDGMENT OF DIRECTORS IN VALUING PROPERTY PURCHASED WITH CORPORATE STOCK.** The Pneumatic Transit Co., a New Jersey corporation, undertook to issue 10,000 shares of its preferred stock of the par value of $10 each to the International Pneumatic Tube Co., a Maine corporation, for a license to use appliances protected by patents and patent applications of the Maine Company, within Philadelphia and within twenty miles of the City Hall in Camden. In a stockholders' injunction suit to prevent this, it was alleged that the International Pneumatic Tube Co. had paid but $47,000 for control of the patents in all of the territory covered by them and that the payment of $100,000 in par value of the Transit Company's stock for a limited territory constituted a fraudulent overvaluation. The Court of Errors and Appeals reversed the order of the Chancellor who had granted an injunction. Among other things they say that the difference between cost to the seller and the price to the purchaser was not "sufficient to overcome the judgment of the directors of the Transit Co. as to the value of the property, which judgment, by the terms of the statute, is conclusive in the absence of actual fraud. (Corporation Act C. S. 1630, section 49) * * * There is no fact set forth tending to show actual fraud nor from which it can be inferred that the rights purchased are not worth the price paid, beyond the fact that it was more than they had cost the vendor, which standing alone would not be evidence of actual fraud." McMahon et al v. The Pneumatic Transit Co. et al (not yet officially reported).

## NEW YORK.

**RESIDENCE OF A DOMESTIC** corporation is in the county where its principal office or place of business is situated. Groshut v. Kinetophote Corp., 157 N. Y. Supp. 312.

**LIABILITY OF DIRECTORS FOR ACTS OF EXECUTIVE COMMITTEE.** An executive committee issued a false prospectus and sold stock thereunder. Direc-

tors, who were not members of the committee and who had no knowledge of their illegal acts, were not personally liable to a person defrauded thereby. Ottmann v. Blaugas Co. of Cuba, 157 N. Y. Supp. 413.

## OHIO.

**THE "BLUE-SKY LAW,"** sections 6373-1 to 6373-24 of the General Code and Laws of 1913-14-15 and 16, has been declared unconstitutional by the United States District Court, S. D. Ohio E. D. in three cases heard on application for temporary injunction. The Geiger-Jones Company vs. Turner et al., Coultrap vs. Turner et al., and Rose et al. vs. Hall et al.—not yet officially reported. Statutes of a kindred character have been declared invalid by Federal courts sitting in Michigan (Alabama & N. O. Transportation Co. vs. Doyle, 210 Fed. 173, Halsey & Co. vs. Merrick, not yet reported); Iowa (Compton vs. Allen, 216 Fed. 537); West Virginia (Bracey v. Darst, 218 Fed. 482) and South Dakota (Sioux Falls Stockyards Co. vs. Caldwell, not yet reported).

**PROTECTION OF "BANK" AND "TRUST" IN CORPORATE NAME.** Section 3, Article XIII of the State Constitution and an Act passed April 17, 1913, which provide against the use of the word "bank," "banker," "banking" or "trust" or "trust company" by organizations which do not submit to regulation by the superintendent of banks is by its terms limited to corporations not organized under the laws of Ohio. For that reason the Attorney General holds that there is nothing "which prevents the use of any of these terms by any Ohio corporation" though not subject to banking regulation. He says that: "This matter should be called to the attention of the legislature, for it was undoubtedly the intention of the people in adopting the constitutional amendment to absolutely prohibit the use of these terms except to corporations, persons, partnerships and associations actually engaged in banking and subject to the inspection, examination and regulation by the banking department of the state." (Annual Report of the Attorney General for 1914, pages 1606, 1609, just issued.)

## OKLAHOMA.

**SUIT ON SUBSCRIPTION** to stock may be maintained by a corporation independent of statutory provisions for forfeiture and sale. Section 39, article 9 of the State Constitution relating to the issuance of stock abrogates prior statutes in conflict therewith. Muskogee Industrial Development Co. v. Ayres, 154 Pac. 1170.

## ONTARIO.

**LIABILITY OF DIRECTORS FOR NEGLIGENCE.** In declaring that *de facto* directors are liable for negligence in paying dividends out of capital the Court says: "I do not think that they were guilty of intentional dishonesty. But more than honesty is required; reasonable intelligence and diligent attention to business are also essential. No one, at any rate in view of the numerous decisions

to the contrary would expect a director of a company to be familiar with all its details; but, before paying the extraordinary dividends declared in the case of this company, the directors should at least have had proper and adequate balance sheets; and they ought not to have divided profits not yet earned." Re Owen Sound Lumber Co., 25 D. L. R. 812.

**OREGON.**

**THE GENERAL MANAGER** of a corporation has authority, in the absence of by-law restrictions, to employ a superintendent for one of the company's plants. Doolittle v. Pacific Coast Safe & Vault Works, 154 Pac. 753.

**TEXAS.**

**VALIDITY OF PAYMENT OF SUBSCRIPTION BY PROMISSORY NOTE.** A subscriber signed and delivered to a corporation a subscription for stock, two promissory notes, one for the principal sum and one for commissions to the agent who solicited the subscription, and an agreement reciting delivery to the corporation of the stock as collateral security for payment of the principal note. A certificate for the shares was signed, torn from the stock book and attached to the principal note. In a suit for the collection of this note, it was contended without avail, that the defendant was not liable because the stock was issued in violation of the State Constitution (Article 12, section 6) and statute to the same effect (Article 1146, Vernon's Sayles' Texas Civil Statutes) which provides that: "No corporation shall issue stocks or bonds, except for money paid, labor done, or property actually received * * *."

The stock was not delivered in this case, but was retained by the corporation. It was therefore not "issued" within the meaning of the law. The arrangement for payment was one entire transaction and constituted a mere subscription agreement. The principal office of the notes under the circumstances was to fix the time of the payment of the sum promised in the subscription agreement. It is said that the evident purpose of the constitutional and statutory provisions is "to protect the purchasing public in the acquisition of stock or bonds of corporations that was not represented by an equivalent in the way of assets belonging to the corporation issuing the stock." No such injury can occur where the stock is not released "so as to become the subject of a commodity on the market." Cattlemen's Trust Co. of Ft. Worth v. Turner, 182 S. W. 438. A note given in payment for stock is void in Texas and uncollectible in the hands of one who takes it from the corporation with notice. Mason vs. First National Bank, etc., 156 S. W. 366: See Journal, Volume I, No. 39.

**VIRGINIA.**

**THE CORPORATION LAWS OF VIRGINIA** are specially notable for provisions that protect the holders of stock issued for property, or for considerations other than cash.

The statute provides that subscriptions to the capital stock of any corporation

shall be paid in money, land or other property, real or personal, leases options, mines, minerals, mineral rights, patent rights, rights of way, or other rights or easements, contracts, labor or services, and there shall be no individual or personal liability on any subscriber beyond the obligation to comply with such terms as he may have agreed to in his contract of subscription. Any corporation may adopt such plan of financial organization and may dispose of its stock or bonds for the purposes of its incorporation at such prices, for such considerations, and on such terms and conditions as it sees fit, provided that before making an issue of its stock or bonds it shall file with the State Corporation Commission a statement verified by the oath of the president and secretary of the corporation and in such form as may be prescribed or permitted by the Corporation Commission, setting forth fully and accurately the basis or financial plan upon which such stock or bonds are to be issued. Where such basis or plan includes services or property other than money received or to be received by the corporation, such statement shall accurately specify and describe in the manner prescribed or permitted by the Commission, the services and property, together with the valuation at which the same are received or to be received, and the judgment of the directors as to the value of such land or other property, real or personal, leases, options, mines, mineral rights, patent rights, rights of way or other rights or easements, contracts, labor or services, in the absence of fraud participated in by both parties to the transaction, shall be conclusive.

In Monk, et al v. Barnett, et al, 113 Va. 635, 75 S. E. 185, the Supreme Court of Appeals of Virginia made the following comment on the above provisions:

"This new policy now in vogue in this state has not only in view the granting of a charter to any three or more individuals to conduct, as a corporation, any business that might be conducted by an individulal or individuals, within the state, but invites the application for such charters, and provides that all persons, firms, partnerships, or other corporations contracting with the corporation chartered in the state must look to the records of the State Corporation Commission for information there to be found, or suggested, as to the character, location, and value of the assets of the corporation, and if they fail to look to said records, or fail to make proper inquiry along lines suggested by these records, and sustain a loss or injury in consequence of such neglect of duty, they shall have no remedy in the courts against the stockholders having certificates of fully paid stock for such loss or injury.

"One who is advised or might have been advised as to the character and value of the assets of a corporation, and extends credit to the corporation, cannot, in the absence of fraud in the organization of the company, or the issuing of its stock or bonds, complain that the assets of the company were not as valuable as he expected them to be, and he has no remedy or right of action against the stockholders of the corporation holding its fully paid stock."

The expenses upon organization of a Virginia corporation are about as follows:

State Treasurer: 20c. on each $1,000 of authorized capital stock—minimum $10.00; maximum $600.00.

State Corporation Commission, $5.00

Secretary of State:

Recording charter—$3.00 first 2 pages and 50c. for each additional page.

Certifying copy, same as recording charter.

Fee to Clerk of Chancery Court:

Recording charter—$3.00 for first 2 pages and 50c. for each additional page.

Recording power of attorney, $1.25

Subsequent to organization corporations must pay on or before March 1st an annual franchise tax and an annual registration fee on the authorized capital stock.

The annual franchise tax, except for certain public service corporations, is as follows:

| On maximum capital of | |
|---|---|
| $25,000 or under | $10.00 |
| Over $25,000 and not exceeding $50,000 | 20.00 |
| " 50,000 " " " 100,000 | 40.00 |
| " 100,000 " " " 300,000 | 60.00 |
| " 300,000 " " " 500,000 | 100.00 |
| " 500,000 " " " 1,000,000 | 200.00 |
| " 1,000,000, $10.00 for each $100,000 of excess, or fraction thereof. | |

The annual registration fee is as follows:

| On maximum capital of | |
|---|---|
| $15,000 or under | $5.00 |
| Over $15,000 to $50,000 | 10.00 |
| " 50,000 to 100,000 | 15.00 |
| " 100,000 to 300,000 | 20.00 |
| " 300,000 | 25.00 |

The procedure for incorporating a Virginia corporation is briefly as follows:

Prepare a certificate of incorporation, containing the name, which shall include the word "corporation" or "incorporated," the name of the county where the principal office in Virginia is located, the purposes, the maximum and minimum amount and classification of stock, the period of duration, the names and residences of the first officers and directors, the amount of real estate to which its holdings at any time are to be limited, and any special powers governing the conduct of its business and its powers or those of the directors and stockholders.

The certificate of incorporation is executed by at least three persons before an officer authorized by the laws of Virginia to take acknowledgments of deeds. This includes among others notaries in foreign states.

The certificate is then presented to the Judge of the Circuit Court of the county or of the circuit, corporation or chancery court of the city wherein the principal office is located. If the Judge certifies that in his opinion the certificate is signed and acknowledged according to law, the fee and tax are paid.

The certificate with the receipt for fee and tax is presented to the State Corporation Commission, together with separate certified checks or money orders, to the order of the Secretary of the Commonwealth and the Clerk of the proper court for their fees. The Commission then examines the certificate.

If approved, the Commission certifies the certificate to the Secretary of the Commonwealth, who records it and certifies it to the Clerk of the Court to which it was originally submitted. When indorsed by him, it is returned to the Corporation Commission, which retains it. A certified copy may be obtained from the Secretary of the Commonwealth.

Copies of the Virginia corporation law may be secured upon request at any of the offices of the Corporation Trust Company.

As an assistance at the time of organization, the Corporation Trust Company will be pleased to ascertain if a name can be used and to advise the attorney accordingly.

Copies of certificates of incorporation of leading industrial organizations, approved stock certificates and official forms are on file for reference. The company will also furnish incorporators and file incorporation papers with the proper officials, hold the organization meeting and furnish minutes thereof.

Many attorneys, being at too great a distance from Virginia to warrant attending personally to the details, but wishing to keep complete control and supervision over the organization of a Virginia corporation, have found the following method convenient and expeditious: upon receipt from the attorney of sufficient data, The Corporation Trust Company submits forms for the proposed charter and other organization papers with an estimate of fees and disbursements. The attorney then approves the charter, and authorizes the filing of the papers and the holding of the necessary meetings. When the organization is completed, the minutes are prepared in book form and delivered to the attorney. Thereafter The Corporation Trust Company maintains the statutory office in Virginia, supplies the agent for service of process, assists its attorney in holding annual and special meetings of stockholders, and notifies him of the times when taxes and reports are required to be filed.

**GENERAL.**

The Corporation Trust Company assists attorneys in the organization of corporations in every State, the Provinces of Canada, Cuba and Mexico. Forms and precedents on file. Information regarding the cost and statutory requirements free on request.

## FOREIGN CORPORATIONS.

**IDAHO.**

**PERSONAL LIABILITY OF DIRECTORS AND OFFICERS.** Under Section 2792, Rev. Codes, officers, agents and representatives of foreign corporations who contract any indebtedness in its name before it has obtained authority to do business are jointly and severally personally liable upon such contract as principals. This liability is barred after three years by the statute of limitations, Subdivision 1, Section 4054, Rev. Codes. A director or officer of such corporation is not permitted, however, to recover against his co-directors and officers under Section 2792. He is estopped by the fact that he has participated in the proceedings of the corporation and assisted in making the contracts. Dietrich v. Copeland Lumber Co., 154 Pac. 626.

**LOUISIANA.**

**LIABILITY OF REORGANIZED CORPORATION FOR CLAIMS AGAINST PREDECESSOR.** After an explosion, inflicting injuries for which it was liable, a

Louisiana gas, electric light and power company, transferred all its assets to a Delaware corporation for "$1,000 and other good and valuable consideration." The new corporation did not expressly assume any of the obligations of the old company. Both companies were controlled by the same persons. These circumstances threw the burden of "explanation" upon the reorganized corporation and the burden of proof that the transfer was in good faith. Failing in this, it was liable to a person injured by the explosion. Wolff v. Shreveport Gas, Electric Light & Power Co., 70 So. 789.

**MASSACHUSETTS.**

**A DE FACTO BOARD OF DIRECTORS** of a Colorado corporation is not authorized as a matter of law to institute and maintain an action against a rival board for alleged damages to the corporation. The general proposition that the acts of de facto directors are valid as to third persons does not apply, "as between the corporation and its stockholders, in matters pertaining to the internal management of the company, and where all the parties interested know that the persons pretending to be officers are not officers de jure." Stratton-Massachusetts Gold Mines Co. v. Davis, 111 N. E. 375.

**MINNESOTA.**

**CARRYING ON AN ADVERTISING AND SELLING CAMPAIGN** under the direction of an agent, who has a place of business in the state where is kept a large supply of advertising matter and a stock of goods from which deliveries are made to customers in Minnesota is doing business in the state, and the agent in charge is a proper person upon whom to make service. Jenks v. Royal Baking Powder Co., 155 N. W. 103.

**NEW JERSEY.**

**FOREIGN CORPORATIONS MAY ACQUIRE STOCK OF NEW JERSEY CORPORATIONS.** The Supreme Court of New Jersey held in the case referred to on p. 31 of the Corporation Journal that foreign corporations, as well as domestic corporations, were precluded from acquiring and holding stock of New Jersey corporations by Chapter 18, Laws of 1913. The Court of Errors and Appeals has reversed the Supreme Court and now holds that the statute in question applies only to domestic corporations. Island Heights & Seaside Park Bridge Company v. The Brooks & Brooks Corporation—not yet reported.

**NEW YORK.**

**SERVICE OF PROCESS.** The Philadelphia & Reading Railway Company is a Pennsylvania corporation. Its freight cars come into New York by connecting carriers and it employs agents in the state who solicit business in its behalf. No

agent was designated in New York for the receipt of process. Suit was brought in the United States District Court for the Southern District of New York by an alleged resident of New York for injuries inflicted in New Jersey. Service in this suit upon a director of the railway company residing in New York is insufficient, even if it is assumed, though it is not so decided, that the railway company is "doing business" in New York. Takacs v. Philadelphia & R. Ry. Co., 228 Fed. 728.

**SERVICE OF PROCESS ON LIMITED PARTNERSHIP.** A statutory limited partnership of Pennsylvania qualified in New York as a foreign corporation by filing with the Secretary of State a copy of its charter and a statement including the designation of a person upon whom process against the corporation might be served within the state. This was done pursuant to demand of the Public Service Commission and in order to avoid complications incident to bids for subway construction. In a subsequent damage suit against the partnership, summons was served upon the designated agent. It was contended that this service was not binding and that service would have to be made upon the individuals forming the partnership. The trial court, however, holds, that this is not so. Proof might disclose that such limited partnerships are corporations in substance and effect so far as the laws of New York are concerned. But on broader grounds the service is good, for, by qualifying the statutory limited partnership is estopped from denying that it is a corporation. Wolski v. Booth & Flinn, Ltd., 157 N. Y. Supp. 294.

## OHIO.

**"DOING BUSINESS" BY FOREIGN TRUST COMPANIES.** House bill 267, passed April 9, 1913, provides that: "Each foreign trust company desiring and intending to do business in this state shall pay to the superintendent of banks a fee of fifty dollars for issuance to it of a certificate authorizing it to transact business in this state. Such fee to be paid before such certificate is issued." Trust companies whose business in Ohio is confined merely to loaning money upon real estate are subject to this act and must pay the designated fee. (Annual Report of the Attorney General for 1914, page 1238, just issued.)

## PENNSYLVANIA.

**"DOING BUSINESS."** A Delaware corporation, organized to promote corporations to operate hotels, agreed to provide a tenant to lease and operate a certain hotel in Pennsylvania. For this purpose it organized a corporation and had it registered in Pennsylvania, but the promoting company itself did not qualify. In a suit by the promoting company upon its agreement, it is held that its non-registration is not a defense. The acts of the promoting corporation were "temporary and incidental" and did not constitute "doing business" so as to preclude it by non-registration from bringing suit. Bellefield Co. v. Carlton Investing Co., 228 Fed. 621.

**SERVICE OF PROCESS** upon the Secretary of the Commonwealth under the Act of June 8, 1911, P. L. 710, in actions against foreign corporations may be made

only upon the process instituted either in the county where the foreign corporation has its principal place of business, or in the county in which the right of action arises. This was so decided in Kolasky vs. Delaware & Hudson Company, 25 District Reports 23 (C. C. P. No. 2 Philadelphia County) where a rule to quash service of a writ was granted and made absolute. In that case the right of action arose and the foreign corporation had its principal office in Lackawanna County. A summons was issued in Philadelphia County and was served upon the Secretary of the Commonwealth in Dauphin County. It was argued that the phrase *right of action* was synonomous with *cause of action* and that the cause of action being here transitory, might be enforced anywhere throughout the state. The court denied this saying that the statute itself indicated a contrary intention.

**TENNESSEE.**

**CONSIGNING AUTOMOBILE TIRES** to a local company for sale by it on a commission basis, does not constitute "doing business" by the consignor so as to require compliance with the foreign corporation laws. I. J. Cooper Rubber Co. v. Johnson, 182 S. W. 593.

**REQUIREMENT THAT GOODS BE KEPT INSURED** by the consignee in the name of a foreign corporation does not make the consignee an agent of the foreign corporation so as to require its qualification under foreign corporation laws. I. J. Cooper Rubber Co. v. Johnson, 182 S. W. 593.

**PROVISION FOR ADJUSTMENTS** with ultimate consumers in a contract for sale of goods on consignment, to be made on behalf of a foreign corporation out of the stock on hand with its consignee within the State does not subject the foreign corporation to the necessity of qualifying. I. J. Cooper Rubber Co. v. Johnson, 182 S. W. 593.

**WASHINGTON.**

**RIGHT TO SUE ON SUBSCRIPTION.** A Maine corporation had secured a license to do business in Washington as a foreign corporation. All of its capital stock, however, had not been subscribed. The laws of Washington require this of domestic corporations and the Constitution and statutes provide that foreign corporations shall not be allowed to transact business within the state on more favorable terms than are prescribed for similar domestic companies. At a stockholders' meeting at Portland, Maine, the directors were directed to levy an assessment upon the stock of the company. The directors met at Seattle and made the levy. Suit was thereafter brought against a Washington corporation on a subscription to stock of the Maine company. In this suit it is held that the contract sued upon "does not require any act bringing into operation the agency or authority of the laws of Washington to give it validity." Under the laws of the State of Maine, the directors had the right to meet in another state and to transact corporate business there.

"The call made by the directors is agreed upon in the contract of subscription, and a call made, authorized as this is by the laws of Maine, and directed by the stockholders, would enable the plaintiff under the law of comity to pursue a subscription of stock in this state, irrespective of statutory authority of Washington." Maine Northwestern D. Co. v. Northwestern Com. Co., 228 Fed. 791.

**WISCONSIN.**

**RESELLING GOODS IN THE STATE NOT INTERSTATE COMMERCE.** A Pennsylvania company not licensed to do business as a foreign corporation, sold an attrition mill to a customer in Wisconsin, under a contract reserving title until the purchase price should be paid. The machinery proved unsatisfactory. A new mill was sent to replace it. Subsequently the corporation entered into a contract with another Wisconsin company for two mills including the one that had been rejected and set aside by the first customer. Complaint in an action against the second company to collect the purchase price of the two machines was dismissed, because the non-authorization of the corporation to do business in the state rendered the contract void. The resale of the old mill was not interstate commerce, but related to "property within the state." Strout, Waldron & Co. v. Amery Mercantile Co., 156 N. W. 158. The laws of Wisconsin apply to single isolated transactions. See Journal, Vol. I, No. 44.

**GENERAL.**

The Corporation Trust Company assists attorneys to obtain authority for foreign corporations to do business in every State, the Provinces of Canada, Cuba and Mexico. Information regarding fees, taxes and statutory requirements free on request.

## TAXATION.

**NEW JERSEY.**

**THE INHERITANCE TAX LAW** (Act of April 9, 1914 and Act April 20, 1909) providing for a tax upon property passing by will or under the interstate laws, is constitutional. Howell v. Edwards, 96 Atl. 186.

**PENNSYLVANIA.**

**STOCK TRANSFER TAX.** Transfer of shares of the capital stock of National Banks is subject to the Pennsylvania Stock Transfer Tax (Act June 4, 1915, P. L. 828) according to an opinion handed down by the attorney general reported in 19 Dauphin County Reporter, page 33

The attorney general considered the possibility of the tax being unconstitutional in so far as it might tax a Federal agency, viz.: a national bank, but distinguished the case from the authorities on this question on the ground that the tax is in effect merely a tax on the sale or transfer of shares of stock and not a tax on the shares themselves, and thus in no measure a tax on the bank or its capital.

**CORPORATE LOAN TAX.** A corporation purchasing real estate subject to a mortgage and thereafter paying interest to the mortgagee is not required to assess and collect the tax due the Commonwealth by resident holders of such indebtedness (Commonwealth of Pennsylvania vs. Du Pont Land Company, 19 Dauphin County Reporter, page 1). In this case the Commonwealth attempted to distinguish prior decisions on this point on the ground that the corporation as grantee of the land had expressly assumed and agreed to pay the indebtedness in its contract with its grantor. The court observed, however, that the duty to collect this tax is purely statutory and the statute imposed the duty to collect only when the corporation pays interest upon obligations which it has *issued*. In this case it issued no obligation except to assume the payment of the principal and interest of the mortgage as to its grantor and not to the holder of the mortgage. This undertaking to assume the mortgage and interest is merely to protect the grantor against loss and does not inure to the benefit of the mortgagee or the holders of the indebtedness.

## VIRGINIA.

**CORPORATIONS ORGANIZED BUT NOT DOING BUSINESS IN THE STATE.** A recent Act (Senate 432, approved March 22, 1916) provides "That no income tax nor ad valorem taxes, state or local, shall be imposed upon the stocks, bonds, investments, capital or other intangible property owned by corporations organized under the laws of this state which do no part of their business within this State; and the mere holding of stockholders' meetings in this state by such corporations required by law, shall not be construed as doing any businesss in this state within the meaning of this Act; provided, however, that if, while any such intangible property is subject to any taxation under the laws of this state, it be assigned or transferred to any such corporation, such property shall continue to be subject to all taxation now or hereafter imposed by law just as if such assignment or transfer had not been made. All liens on such property for taxes now or hereafter provided for by law are hereby preserved, and such taxes may be assessed either against the assignor or the assignee, and however assessed may be collected of either by any of the methods now or hereafter provided for by law." House Bill No. 555 providing for an income tax on corporations was approved March 22, 1916.

## WASHINGTON.

**PAYMENT OF ANNUAL CORPORATION LICENSE FEE** before argument for new trial and before entry of the findings and the decree is sufficient compliance with Section 3715 Rem. & Bal. Code, so as to enable the plaintiff corporation to conduct a suit in the State Courts. Northwest Motor Co. v. Braund, 154 Pac. 1098.

## UNITED STATES SUPREME COURT.

**STATE TAXATION OF TRADING STAMPS IS CONSTITUTIONAL.** Statutes of Florida and of Washington imposing license taxes with respect to the

use of coupons and profit-sharing certificates in connection with the sale of merdise are not unconstitutional, though the amount of such taxes is so large as to operate as a prohibition of the business. The transactions involved are not interstate commerce, though the manufacturer and shipper is located in another state or the coupons are redeemed in another state. Such legislation is an exercise of a state's police power. The propriety thereof is a proper legislative as distinguished from a judicial question. Coupon systems are not mere advertising. "Advertising is merely identification and description, apprising of quality and place. It has no other object than to draw attention to the article to be sold, and the acquisition of the article to be sold constitutes the only inducement to its purchase. * * * The schemes of complainants have no such directness and effect. They rely upon something else than the article sold. They tempt by a promise of a value greater than that article and apparently not represented in its place, and it hence may be thought thus by an appeal to cupidity lure to improvidence. This may not be called in an exact sense a 'lottery,' may not be called 'gaming'; it may, however, be considered as having the seduction and evil of such, and whether it has may be a matter of inquiry and of judgment that it is finally within the power of the legislature to make." It is pointed out in a note to the Rast case that 23 states have attempted either to prohibit or to license the selling or use of trading stamps and coupons and that there has been like legislation for the District of Columbia and the Territory of Hawaii. Rast v. Van Deman & Lewis Co. et al. (No. 41—October Term, 1915); Tanner et al. v. Little et al. (No. 224—October Term, 1915); Pitney v. State of Washington (No. 242—October Term, 1915).

### GENERAL.

The Corporation Trust Company's report and Tax service sends out timely notice to attorneys of reports and tax matters requiring attention in every state and the Provinces of Canada, and gives information regarding forms, practice and rulings.

## UNFAIR METHODS OF COMPETITION.

### CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

**PROTECTION OF ADDRESS.** As incident to an infringement suit involving the registered trade mark, "Old Smoke House" in connection with a brand of smoking tobacco, the Court may also on grounds of unfair competition protect the use of the complainant's address to smokers. Jacoway v. Young, 228 Fed. 630.

### UNITED STATES DISTRICT COURT—NEW YORK.

**"NORUB" AND "NODUST."** Plaintiff priorly adopted the term "Norub" and placed it outside of a shield design on pasteboard boxes containing an article to assist in washing clothes. The defendant adopted the term "Nodust" in connection with a shield design on cylindrical shaped cans containing a green powder

to be used as a germicide and cleanser in sweeping. Plaintiff's design was registered as a trade-mark. Defendant's design bore the word "trade-mark" but was not registered. This constitutes unfair competition and plaintiff will be protected on that ground, but not because of infringement of its registered trade mark. Van Zile v. Norub Mfg. Co., 228 Fed. 829.

## UNITED STATES SUPREME COURT.

**TERRITORIAL EXTENT OF TRADE-MARK RIGHTS.** Allen & Wheeler, of Troy, Ohio, adopted in 1872 and subsequently used the words "Tea Rose" as a trade name for flour. It did not advertise or sell this brand in Alabama or adjoining states. In 1895 The Hanover Star Milling Company of Illinois adopted the same title for one of its brands and in 1901 it began a vigorous advertising campaign thereof in Alabama and parts of Mississippi, Georgia and Florida. In 1895 the Steeleville Milling Company also of Illinois, adopted the title "Tea Rose" and subsequently began to market this brand in Alabama. The Hanover Company brought suit against an Alabama dealer to enjoin him from selling the Steeleville Company's brand in Alabama. The early adoption of the title by the Allen & Wheeler Company was set up as a defense to this suit and moreover the Allen & Wheeler Company itself brought suit against The Hanover Company to restrain its use of the term "Tea Rose" without territorial restriction. Both cases are disposed of by the Supreme Court in the same opinion. None of the parties had registered the trade mark under any act of Congress or under the law of any state, so that the cases are decided upon common-law principles. The common law of trade-marks is but a part of the broader law of unfair competition. The questions in these cases are important for their bearing upon the territorial extent of trade-mark rights. "In the ordinary case of parties competing under the same mark in the same market, it is correct to say that prior appropriation settles the question. But where two parties independently are employing the same mark upon goods of the same class, but in separate markets wholly remote the one from the other, the question of prior appropriation is legally insignificant, unless at least it appear that the second adopter has selected the mark with some design inimical to the interests of the first user, such as to take the benefit of the reputation of his goods, to forestall the extension of his trade, or the like." The Supreme Court agrees with the Court below (208 Fed. 519) where it says: "Since it is the trade, and not the mark, that is to be protected, a trade-mark acknowledges no territorial boundaries of municipalities or states or nations, but extends to every market where the trader's goods have become known and identified by his use of the mark. But the mark, of itself, cannot travel to markets where there is no article to wear the badge and no trader to offer the article." Tested by this principle The Hanover Company is entitled to protection of "Tea Rose," against the Steeleville Company in Alabama. Allen & Wheeler's "Tea Rose" though priorly adopted, had not reached that market and The Hanover Company in good faith and without notice of Allen & Wheeler's mark had expended a large amount of money in building up its trade there.

It also results that Allen & Wheeler are not entitled to general protection without territorial restriction against The Hanover Company. Its rights are confined to

the territory in which it advertised and sold the brand in question. Hanover Star Milling Co. v. Metcalf, Allen & Wheeler Co. v. Hanover Star Milling Co., Nos. 23 and 30—October Term 1915, not yet reported.

## TRUSTS AND MONOPOLIES.

### UNITED STATES CIRCUIT COURT OF APPEALS.

**EXCLUSIVE RIGHT TO SELL MOTOR CARS IN DESIGNATED TERRITORY.** The Cole Motor Car Company, an Indiana corporation, entered into a contract in Indiana with a citizen of Texas for distribution of its cars in certain designated counties in Texas. The contract provided for invoicing to the distributor at prices fixed in advance by the company and a commission to be paid to the distributor on each car sold. The contract also contained a clause to the effect that the distributor should have "the exclusive right to sell Cole motor cars" in the territory named. In a suit against the distributor for a balance due on cars delivered to him a defense was set up that the territorial restriction in the contract rendered it void as violative of the Texas antitrust law. It is held that the transaction constituted a consignment, involved interstate commerce and must be determined by the antitrust laws of the United States, rather than the antitrust laws of Texas. The conclusion is reached that neither of these laws is violated. The agreement did not restrict trade. The Court says: "There are a multitude of other companies from whom purchasers can readily obtain motor cars, varying in little, if anything, from the perfectibility of the car made by the plaintiff company. It is common knowledge that most, if not all, of such motor companies avail themselves of similar arrangements. The public, indeed, finds it no small task to avoid the competition and solicitations of the agents or consignees of such companies." Cole Motor Car Co. v. Hurst, 228 Fed. 280.

## INCOME TAX.

### RULINGS AND REGULATIONS.

A ruling holds that no return is required to be made by an executor until the settlement of the estate has reached a stage where the beneficiaries and their respective interests in the income of the estate are determinable (p. 370).

Where various parcels of stock of the same issue are bought and sold at different dates the stock first purchased is to be considered, in the absence of other identification, as that which is sold, and the profit or loss computed on the price paid therefor (p. 371).

Partners are required to return their respective interests in the firm's accounts receivable (p. 371).

The stockholder owning the stock at the time the tax on it becomes due and payable is the one entitled to deduct the amount of the tax in cases where a bank pays taxes for its stockholders under the provisions of T. D. 2135 (p. 372).

Corporations are required to list their holdings of national, state and municipal bonds in the annual return (p. 372).

An important opinion by the U. S. District Court, S. D. Ohio W. D., holds that

profit from stock purchased in 1900 and sold in 1909 was properly considered as income under the provisions of the Corporation Excise Tax Law (p. 374). This opinion holds contrary to the opinion of the Circuit Court of Appeals, 8th Circuit, in the case of the Gauley Mountain Coal Company vs. Hayes (p. 350).

The case also holds that a loss sustained in one year may not be deducted in a subsequent year, although not discovered until the subsequent year (p. 378).

When royalties or rentals represent in part a return of the capital originally invested payment thereof is not subject to the provisions of the law requiring deduction of the tax at the source (p. 378).

Voluntary payments by stockholders to make good a deficit of a corporation do not constitute income to the corporation (p. 379).

When a greater amount of normal tax than that to which a taxpayer is liable has been withheld at the source it is not permissible to deduct the excess from the amount of additional tax to which he may be liable (p. 379). The proper procedure is to pay the additional tax in full and apply for refund or abatement of the excess withheld at the source.

An important Treasury Decision on compromises of the specific penalties for failure to file returns appears on page 380. It holds that the minimum amounts which may be received in compromise for the year 1914 are $10.00 from corporations and $5.00 from individuals or withholding agents; for the year 1915 the minimum amount is $20.00 from both classes and for both years the minimum amounts are $30.00 from corporations and $25.00 from individuals or withholding agents.

(NOTE: The page references are to our Income Tax Service 1916, in which these rulings appear in full. They are contained in letters answering specific questions and will not appear in other publications).

## WAR TAX.

### RULINGS AND REGULATIONS,

A decision of the District Court, E. D. Pa., holds that the Emergency Revenue Act is constitutional. The decision was handed down in the case of a corporation seeking to avoid payment of the special tax on trust companies as bankers. The court also holds that the trust company cannot distinguish between capital engaged in banking business and capital engaged in other lines of business in determining the amount of capital used or employed on which the tax is based (p. 322).

Marriage certificates are not taxable under the Emergency Revenue Act of October 22, 1914 (p. 328).

(NOTE: The page references above are to our War Tax Service, in which the rulings and regulations are printed in full. Some of the rulings are formal treasury decisions; others are contained in letters answering specific questions).

## FEDERAL RESERVE.

### RULINGS AND REGULATIONS.

Informal rulings have been made by the Federal Reserve Board on statement requirements for trade acceptances purchased in open market, rates of domestic

acceptances, return of Federal Reserve notes to bank of issue, extent to which bills receivable may be rediscounted, direct discount by Federal Reserve Banks, drafts purchased in open market, cattle paper, sitting of Advisory Council with Federal Reserve Bank directors and on cotton loan paper (pp. 415–418).

Opinions have been given by the Law Department on reports of condition of state banks and trust companies, deposits with Federal Reserve Banks of unfit currency, savings and loan associations, interlocking directorates, liquidation of a member bank, and the purchase and discount of loans secured by farm land (pp. 419–423).

The Federal Reserve Board announces that it has ready for publication a revised draft of its regulations, to be known as the Series of 1916, which will supersede all other regulations relating to the same subjects (p. 24)

Modifications of Boston, New York, Dallas and Atlanta Federal Reserve Districts have been made (p. 424).

The Secretary of the Treasury has published a ruling regarding the conversion of United States two per cent. bonds bearing circulation privilege against which no circulation is outstanding, into one-year gold notes and thirty-year three per cent. gold bonds (p. 426). The Federal Reserve Board ruled that applications for sale of government bonds could be withdrawn if request for withdrawal was received by the Board before March 28th (p. 426).

(NOTE: The page references are to our Federal Reserve Act Service, which reports in full all rulings, regulations and opinions of the Federal Reserve Board.)

## TRADE COMMISSION.

### RULINGS AND REGULATIONS.

The Federal Trade Commission has issued a ruling on price discrimination by absorption of freight rates (p. 64).

(NOTE: The reference is to our Federal Trade Commission Service, which reports all rulings, regulations and complaints of the Federal Trade Commission.)

## STATE LEGISLATURES.

**ADJOURNMENTS.** At the time of going to press the Legislatures of the following States have adjourned the 1916 Regular Session: Kentucky, South Carolina, Virginia, New Jersey. Special sessions in California, Oklahoma, South Dakota, Illinois have also adjourned. Many important laws relating to Corporations, Labor and Taxation have been enacted by the Legislatures of these States. Our Legislative Department is prepared to furnish advance copies of such laws and laws enacted by Congress at a reasonable charge per copy. If all the new laws on any particular subject are desired, an estimate of the total cost will be given upon information as to the subject and the States to be covered.